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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
Against:

Case No. 3671

12 BERNARD J. NAGINIS
13 344 N. State Street, #152
14 San Jacinto, CA 92583

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about November 17, 2008, the Board of Pharmacy, Department of Consumer
22 Affairs received an application for Registration as a Pharmacy Technician from Bernard Joseph
23 Naginis (Respondent). On or about November 4, 2008, Bernard Joseph Naginis certified under
24 penalty of perjury to the truthfulness of all statements, answers, and representations in the
25 application. The Board denied the application on February 4, 2010.

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1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 4300(c) of the Business and Professions Code (Code) provides that the board
6 may refuse a license to any applicant guilty of unprofessional conduct.

7 **STATUTORY AND REGULATORY PROVISIONS**

8 5. Section 475 of the Code states:

9 (a) Notwithstanding any other provisions of this code, the provisions of this
10 division shall govern the denial of licenses on the grounds of:

11 (1) Knowingly making a false statement of material fact, or knowingly
omitting to state a material fact, in an application for a license.

12 (2) Conviction of a crime.

13 (3) Commission of any act involving dishonesty, fraud or deceit with the
14 intent to substantially benefit himself or another, or substantially injure another.

15 (4) Commission of any act which, if done by a licentiate of the business or
profession in question, would be grounds for suspension or revocation of license.

16 (b) Notwithstanding any other provisions of this code, the provisions of this
17 division shall govern the suspension and revocation of licenses on grounds specified
in paragraphs (1) and (2) of subdivision (a).

18 (c) A license shall not be denied, suspended, or revoked on the grounds of a
19 lack of good moral character or any similar ground relating to an applicant's
character, reputation, personality, or habits.

20 6. Section 480 of the Code states:

21 (a) A board may deny a license regulated by this code on the grounds that the
22 applicant has one of the following:

23

24 (3) Done any act which if done by a licentiate of the business or profession
in question, would be grounds for suspension or revocation of license.

25 The board may deny a license pursuant to this subdivision only if the crime
26 or act is substantially related to the qualifications, functions or duties of the business
or profession for which application is made.

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7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

8. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

9. Section 4301 states in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

....

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

....

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

....

10. Title 16, California Code of Regulations, section 1770, states:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

1 11. Health and Safety Code section 11358 provides:

2 Every person who plants, cultivates, harvests, dries, or processes any
3 marijuana or any part thereof, except as otherwise provided by law, shall be punished
4 by imprisonment in the state prison.

4 **DRUG**

5 12. Marijuana is a Schedule I controlled substance as designated by Health and Safety
6 Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Code section 4022.

7 **FIRST CAUSE FOR DENIAL OF APPLICATION**

8 **(Unprofessional Conduct-Possession of a Controlled Substance)**

9 13. Respondent's application is subject to denial under sections 480(a)(3), and 4301(o)
10 for violation of section 4060 of the Code in that Respondent used a controlled substance,
11 marijuana. The circumstances are as follows:

12 a. On or about November 4, 2008, Respondent submitted an Application For
13 Registration as a Pharmacy Technician and answered "yes" under penalty of perjury under the
14 laws of the State of California to the following questions, "[d]o you currently engage, or have you
15 been engaged in the past two years, in the illegal use of controlled substances? If 'yes,' are you
16 currently participating in a supervised rehabilitation program or professional assistance program
17 which monitors you in order to assure that you are not engaging in the illegal use of controlled
18 substances?"

19 b. In his November 3, 2008 Letter of Explanation, Respondent stated that
20 "[c]urrently I do not smoke marijuana. I grew my own marijuana for a number of years and my
21 supply ran out in June 2007. I quit smoking marijuana at that time. Since June 2007 I have
22 smoked marijuana on two occasions: Thanksgiving week 2007 and the last weekend of
23 September 2008."

24 **SECOND CAUSE FOR DENIAL OF LICENSE**

25 **(Unprofessional Conduct-Cultivating a Controlled Substance)**

26 14. Respondent's application is subject to denial under sections 480(a)(3) and
27 4301(j), in that Respondent planted and cultivated marijuana in violation of Health and Safety
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1 Code section 11358 as is more fully described in paragraph 13 above, which is incorporated by
2 reference as thought set forth in full herein.

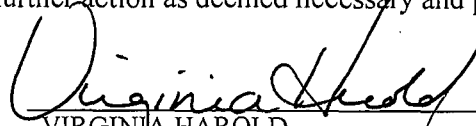
3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Denying the application of Bernard Joseph Naginis for Registration as a
7 Pharmacy Technician;

8 2. Taking such other and further action as deemed necessary and proper.

9 DATED: 6/3/10



10 VIRGINIA HAROLD
11 Executive Officer
12 Board of Pharmacy
13 Department of Consumer Affairs
14 State of California
15 *Complainant*

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